

Legislative Council—No 271A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 30 November 2017

South Australia

Statutes Amendment (Attorney-General's Portfolio No 3) Bill 2017

A BILL FOR

An Act to amend the *Advance Care Directives Act 2013*; the *Bail Act 1985*; the *Construction Industry Long Service Leave Act 1987*; the *Guardianship and Administration Act 1993*; the *Legal Practitioners Act 1981*; the *Magistrates Act 1983*; the *Magistrates Court Act 1991*; the *Remuneration Act 1990*; the *Second-hand Dealers and Pawnbrokers Act 1996*; the *South Australian Employment Tribunal Act 2014*; the *Spent Convictions Act 2009*; and the *Young Offenders Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on the day on which it is assented to by the Governor.
- (2) Sections 21, 22, 23 and 24 will be taken to have come into operation on 1 July 2017.
- 10 (3) Subject to subsection (4), sections 13 to 18 (inclusive) will come into operation on 8 July 2018.
- (4) If this Act is assented to after 8 July 2018, sections 13 to 18 (inclusive) will be taken to have come into operation on 8 July 2018.
- (5) The following sections will come into operation on a day to be fixed by proclamation:
- 15 (a) sections 5 to 12 (inclusive);
- (b) sections 19 and 20;
- (c) sections 25 to 34 (inclusive).

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Advance Care Directives Act 2013*

4—Amendment of section 45—Resolution of disputes by Public Advocate

Section 45(12)—delete subsection (12)

Part 3—Amendment of *Bail Act 1985*

5—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *telephone* insert:

10 *training centre* has the same meaning as in the *Young Offenders Act 1993*;

6—Amendment of section 6—Nature of bail agreement

Section 6(3)—after paragraph (b) insert:

(ba) if the person is in a training centre—the manager of the training centre; or

7—Amendment of section 7—Guarantee of bail

Section 7(3)—after paragraph (b) insert:

(ba) if the person who is to be released on bail is in a training centre—the manager of the training centre; or

Part 4—Amendment of *Construction Industry Long Service Leave Act 1987*

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8—Amendment of section 4—Interpretation

Section 4(1), definition of *electrical or metal trades work*, (b)—after subparagraph (ii) insert:

(iii) data and communication cabling; or

25

(iv) security alarm equipment; or

9—Amendment of section 15—Crediting effective service under this Act and the Long Service Leave Act

(1) Section 15(1) and (2)—delete subsections (1) and (2) and substitute:

- 5 (1) For the purposes of this section, if a person employed as a construction worker commences work in a different capacity in the service of the same employer, the following provisions apply:
- 10 (a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);
- 15 (b) the period of effective service credited under this Act in respect of work undertaken by the person as a construction worker in the service of that employer (but no other employer) will be credited to the person under the *Long Service Leave Act 1987* (on the basis that 5 days of effective service under this Act is equivalent to 7 days of service under the other Act) (and an effective service so credited will then be cancelled under this Act).

20 (2) For the purposes of this section, if a person employed in a capacity other than as a construction worker commences work as a construction worker in the service of the same employer, the following provisions apply:

- 25 (a) the person's continuity of service is preserved, but only in respect of the aggregate of the periods of work undertaken in each capacity in the service of that employer (and not in respect of any periods of work undertaken with any other employer);
- 30 (b) the period of service in respect of work undertaken by the person other than as a construction worker in the service of that employer (but no other employer) calculated in accordance with the *Long Service Leave Act 1987* up to the point of change in the nature of employment will be credited as effective service for the purposes of this Act (on the basis that 7 days of service under the other Act is equivalent to 5 days of effective service under this Act).

(2) Section 15(3)—after "person's employer" insert:

(being the employer referred to in subsection (1))

40 (3) Section 15(3)—delete "**D** is the effective service entitlement of the person as a construction worker under this Act (expressed in days)." and substitute:

45 **D** is the total number of days of effective service entitlement of the person as a construction worker under this Act minus the portion of effective service entitlement representing the construction work undertaken by the person in the service of any employer other than the employer referred to in subsection (1).

Part 5—Amendment of *Guardianship and Administration Act 1993*

10—Insertion of section 76A

After section 76 insert:

76A—Death by natural causes of person while under detention order may be subject of inquest

- (1) The death or apparent death of a person from natural causes while subject to an order under section 32(1)(b) is, despite the definition of *death in custody* in section 3(1) of the *Coroners Act 2003*, not to be taken to be a death in custody for the purposes of section 21(1)(a) of that Act.
- (2) For the purposes of section 21(1)(c) of the *Coroners Act 2003*, the Coroner's Court must, if the State Coroner considers it necessary or desirable to do so or at the direction of the Attorney-General, hold an inquest to ascertain the cause or circumstances of the death of a person who apparently died from natural causes while subject to an order under section 32(1)(b).
- (3) Subsections (1) and (2) apply regardless of whether the death of the person occurred before or after the commencement of this section.

Part 6—Amendment of *Legal Practitioners Act 1981*

11—Amendment of section 5—Interpretation

Section 5(1), definition of *corresponding law*—delete the definition and substitute:

corresponding law means the following:

- (a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the other jurisdiction to be a law that corresponds to this Act, the law declared under that regulation for the other jurisdiction;
- (b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction, a previous law applying to legal practice in the other jurisdiction;

12—Amendment of Schedule 3—Costs disclosure and adjudication

- (1) Schedule 3, clause 25(2)(c)(ii)—delete subparagraph (ii)
- (2) Schedule 3, clause 26(1)—delete "A" and substitute:

Subject to subclause (1a), a

(3) Schedule 3, clause 26—after subclause (1) insert:

(1a) Subclause (1) does not apply to a conditional costs agreement relating to proceedings under the *Migration Act 1958* of the Commonwealth.

5 **Part 7—Amendment of *Magistrates Act 1983***

13—Amendment of section 6—Magistracy

(1) Section 6(1)—delete subsection (1) and substitute:

(1) There will be a Chief Magistrate appointed by the Governor on the recommendation of the Attorney-General.

10 (2) Section 6(2)—delete "or Deputy Chief Magistrate"

(3) Section 6(3)—delete subsection (3)

13A—Insertion of section 6B

After section 6A—insert:

6B—Acting Chief Magistrate

15 (1) Subject to subsection (2), the Chief Magistrate may, by instrument in writing, appoint a magistrate to be Acting Chief Magistrate during a period, and subject to any conditions, specified in the instrument of appointment.

20 (2) The appointment of an Acting Chief Magistrate under subsection (1) ceases on the office of the Chief Magistrate becoming vacant.

(3) If—

(a) the office of the Chief Magistrate becomes vacant; or

(b) —

25 (i) the Chief Magistrate is absent, or, for any reason, is unable for the time being to carry out the duties of the office; and

(ii) an Acting Chief Magistrate has not been appointed under subsection (1),

30 the Governor may appoint a magistrate to be Acting Chief Magistrate until—

(c) a person is appointed to the office of the Chief Magistrate; or

(d) the Chief Magistrate returns to official duties,

(as the case requires).

35 (4) On the appointment of a magistrate to be Acting Chief Magistrate under this section, any power or function attached to the office of the Chief Magistrate under this or any other Act devolves on the magistrate so appointed.

14—Amendment of section 7—Administration of magistracy

- (1) Section 7(2)—delete subsection (2)
- (2) Section 7(3)—delete "administrative powers or functions" and substitute:
powers or functions under this or any other Act

5 **15—Amendment of section 13—Remuneration of magistrates**

Section 13(1)—delete "and Deputy Chief Magistrate"

Part 8—Amendment of *Magistrates Court Act 1991*

16—Amendment of section 11—Chief Magistrate

10 Section 11(3)—delete "Deputy Chief Magistrate and, if both are absent, on a Magistrate appointed by the Governor to act in the absence of the Chief Magistrate" and substitute:

Acting Chief Magistrate appointed in accordance with section 6B of the *Magistrates Act 1983*

17—Amendment of section 49—Rules of Court

15 Section 49(2)—delete ", the Deputy Chief Magistrate"

Part 9—Amendment of *Remuneration Act 1990*

18—Amendment of section 13—Determination of remuneration of judges, magistrates and certain others

Section 13(h)—delete paragraph (h)

20 **Part 10—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996***

19—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *Commissioner of Police* insert:

25 *criminal intelligence* means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

20—Amendment of section 5A—Criminal intelligence

- 30 (1) Section 5A—before subsection (1) insert:
- (a1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

(2) Section 5A(2)(b)—after "affidavit" insert:

"of a police officer of or above the rank of superintendent"

(3) Section 5A—after subsection (2) insert:

(3) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

Part 11—Amendment of *South Australian Employment Tribunal Act 2014*

21—Amendment of section 3—Interpretation

Section 3(1), definition of *relevant Act*—after "an Act" insert:

(including this Act)

21A—Amendment of section 4—Relevant Acts prevail

After the contents of section 4 (now to be designated as subsection (1))—insert:

(2) Subsection (1) does not apply in relation to a rule made under section 92(1)(ka).

22—Insertion of Part 2 Division 8

After section 26I insert:

Division 8—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971*

26IA—Additional provisions relating to jurisdiction under *Workers Compensation Act 1971*

(1) The purpose of this section is, in consequence of—

(a) the continued application of the *Workers Compensation Act 1971*¹ under Schedule 9 clause 59(1) of the *Return to Work Act 2014*; and

(b) the dissolution of the Industrial Relations Court under section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*,

to confer on the Tribunal the same jurisdiction under the *Workers Compensation Act 1971* that was previously conferred on the Industrial Relations Court.

Note—

¹ The *Workers Compensation Act 1971* was repealed by the *Workers Rehabilitation and Compensation Act 1986*.

(2) The *Workers Compensation Act 1971* is to be read—

- (a) as if a reference in that Act to the "Court" were a reference to the Tribunal; and
- (b) as if reference in that Act to a "Judge" were a reference to a Presidential member of the Tribunal who is a District Court judge; and
- (c) as if a reference in that Act to the "Registrar" were a reference to a registrar of the Tribunal; and
- (d) as if a reference in that Act to an "Industrial magistrate" were a reference to a Presidential member of the Tribunal who is a magistrate; and
- (e) as if a reference in that Act to the "Rules" were a reference to the Rules of the Tribunal; and
- (f) as if a reference in that Act to the "Regulations" were a reference to regulations under this Act; and
- (g) as if a reference in that Act to the "Full Industrial Relations Court" were a reference to the Full Bench of the Tribunal in Court Session.

(3) The jurisdiction of the Tribunal by virtue of the operation of subsection (2) is assigned to the South Australian Employment Court.

22A—Amendment of section 92—Rules

(1) Section 92(1)—after paragraph (k) insert:

- (ka) providing that a rule made pursuant to paragraph (k) is to prevail over an inconsistent provision of a relevant Act; and

(2) Section 92(5)—delete "The" and substitute:

Except to the extent specified in subsection (1)(ka), the

23—Amendment of section 93—Regulations

Section 93(2)(e)—after "under" insert:

this or

24—Transitional provisions

(1) In this section—

decision, of the Industrial Relations Court includes a direction, determination or order of the Industrial Relations Court;

decision, of the Tribunal, has the same meaning as in the principal Act;

Industrial Relations Court means the Industrial Relations Court as in existence immediately before the commencement of section 69 of the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*;

principal Act means the *South Australian Employment Tribunal Act 2014*;

relevant day means the day on which this section comes into operation;

Tribunal means the South Australian Employment Tribunal.

- 5 (2) A decision (or purported decision) of the Industrial Relations Court made in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision of the Tribunal.
- 10 (3) A right (or purported right) to bring proceedings in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day (but not so exercised before that day) will be exercised as if Part 2 Division 8 of the principal Act had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal.
- 15 (4) Any proceedings that were before (or purportedly before) the Industrial Relations Court in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been validly commenced before the Tribunal.
- (5) The Tribunal may—
- 20 (a) receive in evidence any transcript of evidence in proceedings before (or purportedly before) the Industrial Relations Court, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations (or purported findings or determinations) of the Industrial Relations Court that may be relevant to proceedings before the Tribunal; and
- 25 (c) adopt any determination (or purported determination), or make any determination, in relation to proceedings before (or purportedly before) the Industrial Relations Court before the relevant day (including so as to make a determination in relation to proceedings fully heard, or purportedly fully heard, before the relevant day); and
- 30 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (6) Nothing in this section affects a right of appeal to the Supreme Court against a decision, direction or order of the Full Court of the Industrial Relations Court made or given (or purportedly made or given) before the relevant day.
- 35 (7) A reference in any instrument or agreement made (or purportedly made) in consequence of Schedule 9 clause 59(1) of the *Return to Work Act 2014* to the Industrial Relations Court will, unless the context otherwise requires, be taken to be a reference to the Tribunal.

Part 12—Amendment of *Spent Convictions Act 2009*

25—Amendment of section 13—Exclusions

- 40 Section 13(2) to (5)—delete subsections (2) to (5) inclusive

25A—Amendment of section 13A—Exclusions may not apply

(1) Section 13A—after subsection (1) insert:

(1a) A young person in relation to whom a finding has been made (as constituting a conviction for the purposes of this Act) that is taken to be immediately spent under section 4(1a), may apply to a qualified magistrate for an order that a prescribed exclusion under clause 14 of Schedule 1 does not apply in relation to the finding.

(2) Section 13A(6)—delete "this section" and substitute:

subsection (1)

(3) Section 13A—after subsection (6) insert:

(6a) The making of an order under subsection (1a) is at the discretion of the qualified magistrate and that discretion will be exercised having regard to—

(a) the nature, circumstances and seriousness of the relevant offence; and

(b) whether the relevant offence involved a child or children or a vulnerable person or persons; and

(c) all the circumstances of the applicant, including—

(i) whether the applicant has a history of offending; and

(ii) the circumstances of the applicant at the time of the commission of the offence and at the time of the application; and

(iii) whether the applicant appears to have rehabilitated and to be of good character; and

(iv) whether not making the order would have an unduly deleterious effect on the applicant's career or employment prospects; and

(d) whether the removal of the exclusion by operation of an order under this section might present a risk to children, vulnerable persons or the public more generally (and, if so, the extent of that risk); and

(e) whether there is any public interest served in not making the order; and

(f) any other matter considered relevant by the qualified magistrate.

(4) Section 13A—after subsection (8) insert:

(9) In this section—

young person means a person of or below the age of 25 years.

26—Amendment of Schedule 1—Exclusions

Schedule 1—before clause 1 insert:

a1—Application of exclusions

(1) An exclusion set out in a clause of this Schedule—

5 (a) does not apply in relation to an offence if the conviction has been quashed and the person has been granted a pardon for the offence, except as may be prescribed by the regulations;

10 (b) does not apply in relation to a designated sex-related offence in relation to which an order has been made under section 8A, except—

(i) in relation to the operation of clause 9A; or

(ii) as may be prescribed by the regulations.

15 (2) An exclusion under clause 6, 7 or 8 does not apply in relation to an offence committed by a particular person if a qualified magistrate has made an order to that effect under section 13A(1).

20 (2a) A prescribed exclusion under clause 14 of Schedule 1 does not apply in relation to a finding (as constituting a conviction for the purposes of this Act) that is taken to be immediately spent under section 4(1a) in respect of a particular young person if a qualified magistrate has made an order to that effect under section 13A(1a).

(3) The regulations may provide that an exclusion set out in a clause of this Schedule does not apply in relation to a finding (as constituting a conviction for the purposes of this Act) that is taken to be immediately spent under section 4(1a).

25 Part 13—Amendment of *Young Offenders Act 1993*

27—Amendment of section 3—Objects and statutory policies

Section 3(3)—after paragraph (a) insert:

30 (ab) compensation and restitution should also be provided, where appropriate, for persons who have suffered loss or damage as a result of offences committed by youths;

28—Amendment of section 4—Interpretation

(1) Section 4(1), after the definition of *injury* insert:

loss or damage includes costs and expenses, but does not include injury;

(2) Section 4—after subsection (2) insert:

35 (3) A reference in this Act to a person who has suffered loss or damage includes a reference to a body that has suffered loss or damage.

29—Amendment of section 8—Powers of police officer

- (1) Section 8(1)—after paragraph (a) insert:
- 5 (ab) the officer may require the youth to enter into an undertaking to pay compensation to a person who has suffered loss or damage as a result of the offence;
- (2) Section 8(1)(c)—delete "or to do anything else that may be appropriate in the circumstances of the case"
- (3) Section 8(1)—after paragraph (c) insert:
- 10 (d) the officer may require the youth to enter into an undertaking to apologise to a person who has suffered loss or damage as a result of the offence;
- (e) the officer may require the youth to do anything else that may be appropriate in the circumstances of the case.
- (4) Section 8—after subsection (5) insert:
- 15 (5a) If a youth enters into an undertaking under this section to apologise to a person who has suffered loss or damage as a result of the offence, the apology must be made in the presence of an adult person approved by a police officer.
- (5) Section 8(9)—after "this Division" insert:
- 20 (other than an offence described in subsection (10))
- (6) Section 8—after subsection (9) insert:
- (10) If a police officer deals with an offence (as a result of which a person has suffered loss or damage) under this Division, the officer must—
- 25 (a) ask the person whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and
- (b) if the person indicates that he or she does wish to have that information—give the person that information.

30—Amendment of section 10—Convening of family conference

- 30 (1) Section 10(1)—after paragraph (d) insert:
- (e) a person who has suffered loss or damage as a result of the offence, and if that person is a youth, the person's guardians.
- (2) Section 10(2)(c)—delete paragraph (c) and substitute:
- 35 (c) will invite the persons referred to in subsection (1) and, in the case of a youth referred to in subsection (1)(d) or (e), will invite them to bring along a person of their choice to provide assistance and support; and

31—Amendment of section 12—Powers of family conference

(1) Section 12(1)—after paragraph (b) insert:

(ba) the conference may require the youth to enter into an undertaking to pay compensation to a person who has suffered loss or damage as a result of the offence;

(2) Section 12(1)(d)—delete "or to do anything else that may be appropriate in the circumstances of the case"

(3) Section 12(1)—after paragraph (d) insert:

(e) the conference may require the youth to enter into an undertaking to apologise to a person who has suffered loss or damage as a result of the offence;

(f) the conference may require the youth to do anything else that may be appropriate in the circumstances of the case.

(4) Section 12(5)—before "named in the undertaking" insert:

or persons who have suffered loss or damage

(5) Section 12(7)—after "of the offence" insert:

or the person suffering loss or damage

(6) Section 12(11)—after "this Division" insert:

(other than an offence described in subsection (12))

(7) Section 12—after subsection (11) insert:

(12) If a family conference deals with an offence (as a result of which a person has suffered loss or damage) under this Division, the Youth Justice Co-ordinator must—

(a) ask the person whether they wish to be informed of the identity of the offender and how the offence has been dealt with; and

(b) if the person indicates that they do wish to have that information—give that information accordingly.

32—Amendment of section 13—Limitation on publicity

Section 13(1)(c)—before "or any other person" insert:

, a person who has suffered loss or damage

33—Amendment of section 26—Limitation on Court's power to require bond

Section 26(3)(ba)—before "or for any other person or body" and insert:

, a person who has suffered loss or damage

34—Amendment of section 64—Information about youth may be given in certain circumstances

Section 64(1)—delete ", loss" and substitute:

or loss